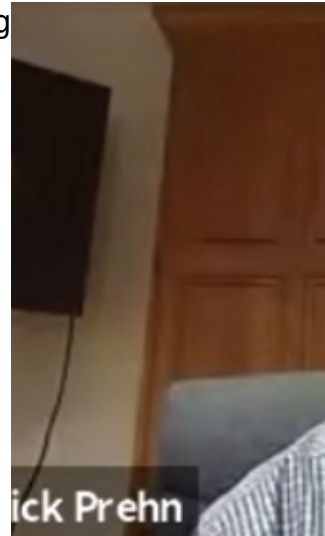


State Supreme Court rules holdover Natural Resources Board member can remain in seat

Written by Wisconsin Examiner Republish
Thursday, 30 June 2022 10:51

<http://newiprogressive.com/images/stories/S5/dnr-board-frederick-prehn-s450.png>



“Today’s decision continues to underscore the erosion of democratic institutions at the hands of Republicans in this state. It’s wrongheaded, it’s shortsighted, and it’s politics at its most dangerous.” – Gov. Tony Evers

MADISON - In a 4-3 [decision](#) on Wednesday, the Wisconsin Supreme Court ruled that a member of the Natural Resources Board (NRB), who has refused to leave his seat since his term expired last May, can remain in the position indefinitely as long as his replacement is not confirmed by the state Senate.

The decision, made by the court’s four conservative justices, effectively prevents duly elected Democratic governors from shaping state policy through appointments to state agencies so long as the state Senate — gerrymandered into a near-impenetrable Republican majority — continues to obstruct gubernatorial nominations.

The case revolves around Frederick Prehn, a Wausau dentist, cranberry farm owner and gun shop owner, who was appointed to the NRB in 2015 by Republican Gov. Scott Walker. NRB members serve staggered six-year terms so last May, Democratic Gov. Tony Evers nominated Ashland educator Sandra Dee Naas to replace Prehn on the board.

Prehn, who at the time of his term’s expiration was the board’s chair, [refused](#) to leave his seat,

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asserting that he doesn't have to leave until Naas is confirmed by the Senate.

In a statement, Evers said that the Supreme Court's decision is an erosion of the state's democracy and that the conservative majority is allowing Republicans to disregard the transfer of power.

"Today, I remind the Wisconsin Supreme Court and the Republican Party of this state that we do still live in a democracy, a very basic function of which is the peaceful and respectful transfer of power, even — and most especially — when you lose," he said. "Since becoming governor, I've worked to appoint experienced, hardworking Wisconsinites from every corner of our state to serve in important roles in our government — just like every governor has before me, and every governor will after me. These Wisconsinites are exceptionally qualified, should be considered on their merit, and should have the opportunity to serve the people of our state, regardless of whether or not they were appointed by a Democrat or share the same ideas as Republicans in the Legislature. They should've been confirmed a long time ago now.

"Today's decision continues to underscore the erosion of democratic institutions at the hands of Republicans in this state," he continued. "It's wrongheaded, it's shortsighted, and it's politics at its most dangerous."

Republicans in Wisconsin have regularly chipped away at the power of the executive branch since Evers was elected. After he defeated Walker in 2018, Republicans held a [lame duck session](#) of the Legislature to strip the governor's office of power before Evers could be sworn in.

The NRB is the policy making body for the Department of Natural Resources. Prehn's refusal to leave has meant Republican appointees have retained a majority on the board. That majority has let them [elect](#) Gregory Kazmierski, another Republican, as chair to replace Prehn and influence major decisions in many of the issues the board is responsible for — most notably [water quality](#) and [hunting regulations](#).

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After refusing to leave the seat, Prehn insisted his decision was not political. Yet his text messages and emails, [obtained](#) by the Wisconsin Examiner, showed his decision was largely motivated by his desire to retain influence over regulation of chemicals in the state's water and the controversial decisions surrounding wolf hunting in Wisconsin.

"Maybe this isn't about politics," Prehn wrote in an email explaining his decision to the leader of an environmental group. "Maybe it's about my belief in some of the major topics that face Wisconsin I will want to deal with."

Last August, Democratic Attorney General Josh Kaul [sued](#) Prehn, asking a Dane County judge to either remove Prehn from the post or rule that Evers had the power to remove him.

Dane County Judge Valerie Bailey-Rihn ruled there was no statutory or constitutional basis for removing Prehn and dismissed the case. On Wednesday, the Supreme Court affirmed that dismissal.

"The expiration of a defined term for an appointed office does not create a vacancy," Chief Justice Annette Ziegler wrote in the majority opinion. "Without a vacancy, the Governor cannot make a provisional appointment and Prehn cannot be replaced with an individual whom the senate has not confirmed."

The Senate has [refused](#) to hold confirmation hearings for dozens of Evers' appointees, including Naas. Senate Majority Leader Devin LeMahieu (R-Oostburg) said in January the body won't hold any more [confirmation hearings](#) for the duration of Evers' first term and the Legislature does not plan to return before the elections this fall.

Prehn's emails showed that he was in communication with members of LeMahieu's staff about his legal ability to retain power. Prehn also communicated with Walker about remaining on the board.

Republican obstruction of Evers' appointments has left a number of state boards and commissions in limbo ahead of the elections in November. Several of Evers' appointees to the

UW System Board of Regents

haven't been confirmed and recently multiple Republican candidates for governor [said](#)

they would immediately fire and replace those board members, completely overhauling the partisan makeup of the body responsible for running the state's public university system.

The three liberal justices, in a dissenting opinion written by Justice Rebecca Dallet, called the decision "absurd," "at odds with itself" and that it was an "incomplete and consequences-be-damned interpretation" of the statutes.

"The majority's absurd holding allows Prehn's six-year term on the Board of Natural Resources — which expired over a year ago — to last for as long as Prehn wants it to, so long as he refuses to leave and the senate doesn't confirm a successor nominated by the governor," Justice Rebecca Dallet wrote in her dissenting opinion. "And even though his term is long expired, the governor can't remove him except for cause. The majority bases these nonsensical conclusions on its misguided reading of a handful of statutes and a common-law doctrine meant to avoid the 'disorder and inconvenience' that would result if incumbents were unable to continue holding office after their terms expired but before a successor was in place. The majority's decision, however, steers our state's government directly into disorder and chaos, threatening the fragile separation of powers central to its functions."

Environmental groups denounced the decision, saying it will have harmful effects on environmental policy in the state.

"Today's decision is a blow to the health of our environment and the health of our democracy," Midwest Environmental Advocates said in a statement. "Fred Prehn coordinated with Scott Walker, lobbyists for Wisconsin Manufacturers and Commerce and an unaccountable, gerrymandered legislature to retain control of environmental policy in Wisconsin. As a result, Scott Walker's appointees continue to control the Department of Natural Resources 1,331 days and counting after Walker lost the election. This undemocratic power grab has allowed Prehn to cast the deciding vote in key decisions related to statewide environmental policy, including the decision to weaken safe drinking water standards."

The Humane Society of the United States called for Prehn's resignation.

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“For more than a year Prehn has squatted in an office that isn’t his, doing serious damage to Wisconsin’s wildlife and the credibility of the Board,” Nicholas Arrivo, an attorney for the organization, said in a statement. “We’re disappointed the majority would allow this antidemocratic stunt to continue, and agree with the three dissenting justices who called today’s holding ‘absurd.’ Prehn should still do the right thing and resign, or risk irreparably tarnishing citizens’ trust in the NRB.”

by Henry Redman, [Wisconsin Examiner](#)
June 29, 2022

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